IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.5013 of 2002
and
WPMP.No.32643 of 2004

P.N.Balasubramaniam ... Petitioner

Vs.

The Management of Indian Overseas Bank
rep.by its Chairman & Managing Director,
763, Anna Salai,
Chennai - 600 002. .. Respondent

* * *

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus as stated therein.

* * *

For petitioner : Mr.V.Prakash, Sr.Advocate
for T.Ram Kumar
For respondent : Mr.G.Venkatraman - for
M/s.Aiyar & Dolia

O R D E R

This Writ Petition has been filed praying for the issuance of a Writ of Mandamus, directing the Respondent Bank to pay pension to the Petitioner in accordance with the pension scheme of 1995, with effect from 1.1.1993, together with interest.

2. Heard the learned counsel for the petitioner as well as for the respondent.

3. It is the case of the petitioner that he was appointed as a Clerk at the Indian Overseas Bank, Bangalore, on 09.02.1955. As such, he had worked till the year 1964 and as a Special Cadre Assistant from the year 1964 to 1966. From 01.10.1966 to 1973, he was a Grade I Officer and from 01.04.1974 to 09.05.1989 he had served as a Grade II Officer. He had retired from service with effect from 09.05.1989, after having put in more than 34 years of service. Prior to his retirement from service, he had given a request for voluntary

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retirement by his letter, dated 10.07.1988, in accordance with the service regulations, and also seeking appointment in the bank for his son. The respondent bank, by a letter, dated 20.09.1988, informed the petitioner that he should make an application for voluntary retirement without the condition that his son should be given an appointment and that the request for voluntary retirement would be subject to the medical examination of the petitioner. Subsequently, the respondent bank had appointed the petitioner's son by a letter of appointment, dated 20.05.1989.

4. The petitioner states that the Indian Banks Association introduced a pension scheme for employees of the various banks, with effect from 01.11.1993. As per I.O.B. Pension Regulations, 1995, the regulations were to take effect from the date of its notification, dated 29.09.1995. The petitioner further states that an employee under the said scheme is defined as any person employed in the service of the bank on full work on permanent basis or on part time work on permanent basis on scale of wages and who opts and is governed by the said regulations but does not include a person employed either on contract basis or daily wage basis or on consolidated wages. Under clause 'y' retirement is defined as under:-

> "(a) Cessation from Bank's service on attaining the age of superannuation specified in service regulations or settlements.
>
> (b) On voluntary retirement in accordance with the provisions contained in regulation 29 of these regulations and;
>
> (c) on premature retirement by the Bank before attaining the age of superannuation specified in service regulations or settlement.

Regulation 29 deals with pension on voluntary retirement and any employee on or after the first day of November, 1993, having completed 20 years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority, retire from service."

Even though the petitioner had opted for the pension scheme by his letter, dated 11.03.1994 , he has not been considered by the respondent bank for being eligible for pension under the said scheme. It is also pointed out that the Supreme Court of India had directed that the pension scheme should be extended to the employees who had retired voluntarily during the period from 01.01.1986 to 31.10.1993 inspite of the fact that the Indian Banks Association, took a stand that only those who had retired after 01.11.1993, will be eligible for pension consequent to Regulation 29 of the Pension Regulations, 1995. Further, the appointment of his son has no legal relevance for extending the pension benefits to the petitioner.

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5. On the contrary, the learned counsel appearing for the respondent bank states that the petitioner while working at the Zonal Office of the respondent bank at Tiruchirappalli, by a letter dated, 10.07.1988, addressed to the General Manager of the respondent bank had requested the bank to accept his voluntary retirement on medical grounds, with effect from 31.10.1988, under Regulation 19 (1) of IOB Officers' Service Regulations. In the same application, the petitioner had requested the respondent bank to provide appointment to his son from 01.11.1988. On receipt of the said application, the respondent bank advised the petitioner that his application for voluntary retirement from service could not be accepted, since it was conditional and that there was no provision for his son's appointment under regulation 19(1) of the regulations. Moreover, acceptance of his voluntary retirement on medical grounds will be subject to the medical examination by the bank's approved doctor.

6. The respondent further states that the petitioner had submitted another application for voluntary retirement under CO. circular permanent EST 104/86 of 27.08.1986 with a request to consider his eldest son one Mr.Sadhasivam for appointment in the respondent bank. A circular, dated 27.08.1986, was issued by the bank, as per the Government of India Guidelines, dated 25.05.1982, wherein the banks were advised to implement the Model Scheme for compassionate appointment to the legal heirs of bank employees retired on medical grounds. The application submitted by the petitioner was placed before the Board and after getting the Board's approval, the respondent bank had relieved the petitioner from service on 09.05.1989, by accepting his premature retirement on medical grounds and the petitioner's son was also given compassionate appointment in the bank under the Compassionate Appointment Scheme. On 11.03.1989, the petitioner addressed a letter to the respondent bank thanking the respondent bank for accepting his application for voluntary retirement on medical grounds and for providing compassionate appointment to his son in the bank.

7. The learned counsel for the respondent further states that the respondent bank had introduced a pension scheme in the year 1995, in accordance with the Indian Overseas Bank (Employees) Pension Regulations, 1995. The said scheme was approved by the Board of Directors of the respondent Bank and was published in the Official Gazette, on 29.09.1995, and it was made applicable to all employees who had joined the bank on or after the notified date, viz., 29.09.1995. As per the Pension Regulations, those employees who were in the services of the bank on or after 01.01.1986, but retired before 1.11.1993, shall be entitled to opt for pension under the Pension Scheme. The Regulation pre-supposed that for exercising the option under the pension scheme the employees concerned shall arrange to refund the Bank's contribution of Provident Fund with interest accrued thereon within a specified date. As per the regulation 2(y)

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of the Regulations, "Retirement" means cessation from the Bank's service on voluntary retirement in accordance with the provisions contained in Regulation 29. As per Regulation 32 of the pension regulations on premature retirement the employee retires from service on account of orders of the Bank to retire prematurely in public interest or for any other reasons specified in service regulations or settlement, if otherwise, he was entitled to such pension or superannuation on that date. Therefore, it is submitted that the case of the petitioner is not covered by the premature retirement contemplated under the Pension Regulations, 1995, as the premature retirement that he had availed was not under the IOB Officers' Service Regulations, 1979, but under the Compassionate Appointment Scheme.

8. It is further stated that on 14.10.1995, the petitioner had submitted his application under the Pension Scheme, 1995, for payment of pension. The Indian Banks Association (IBA) had clarified that the pension scheme will be applicable only to those employees who were given voluntary retirement or who retired prematurely under Regulation 19(1) of the service regulations and not otherwise. Therefore, by the proceedings, dated 16.12.1995, the petitioner was informed that the Pension Scheme cannot be made applicable to him, since his request for retirement was not considered under Regulation 19(1) of the Service Regulations. Again, the petitioner sent a letter, dated 09.06.2000, requesting for payment of pension as per the Pension Scheme, 1995, placing reliance on the circular of Indian Banks Association, dated 01.06.2000. The petitioner was informed by the respondent that since he was retired under the premature retirement on medical grounds category with compassionate appointment to his son, he is not eligible for pension benefits under the Officers' Service Regulations. The proceedings, dated 13.06.2000, had not been challenged by the petitioner in a manner known to law and the same has become final. The Indian Banks Association by its letter, dated 22.08.2000, had made it clear that the circular, dated 01.06.2000, was with specific reference to the cases of those officers who had voluntarily retired from services during the period from 01.01.1986 to 31.10.1993 under schemes framed by the banks for the purpose, in pursuance of the proviso to Regulation 19(1) of the Officers' Service Regulations and the case of the petitioner is that he had retired on medical grounds with the benefit of compassionate appointment would not be covered by the circular, dated 01.06.2000. This was communicated to the petitioner by the respondent bank on 13.12.2000. This has also not been challenged by the petitioner and it has become final. The petitioner would not be eligible for pension under the Pension Scheme, 1995, merely because the petitioner had rendered service for over 34 years. As long as his retirement does not fall under Regulation 19 (1) of the Officers' Service Regulations, the petitioner is not eligible for payment of pension.

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9. On a perusal of the Indian Overseas Bank (Employees) Pension Regulations 1995, it is seen that one of the categories for Pension Scheme is available for the employees who were in the service of the bank on or after 01.01.1986 but retired before 1.11.1993. Clause 2(y) of the Indian Overseas Bank (Employees) pension Regulation 1995 is as follows :-

> ' (y) "Retirement" means cessation from Bank's service:
>
> (a) On attaining the age of superannuation specified in Service Regulations or Settlements :
> (b) On voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;
> (c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement"

Regulation 3 of the Indian Overseas Bank (Employees') Pension Regulations 1995 is as follows :-

"3. Application :-

These regulations shall apply to employees who,

(1) (a) were in the service of the Bank on or after the 1st day of January, 1986, but had retired before the 1st day of November,1993 ; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause

> (b) the entire amount of the bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the bank; or

In clause 14 relating to qualifying service, it is stated as follows :-

> " Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of

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ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension."

Clause 15 regarding commencement of Qualifying Service reads as follows :-

Subject to the provisions contained in these regulations, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on a permanent basis."

It is seen that regulation 29 of the Pension Regulations, 1995, applies only to where an employee retires from service on or after the first day of November, 1993. Therefore, it is not applicable to the petitioner herein and Regulation 32 with regard to premature retirement, is as follows :-

"32. Premature retirement Pension may be granted to an employee who ;-

(a) has rendered minimum ten years of service
`(b) retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reasons specified in service regulations or settlement, if otherwise he was entitled to such pension or superannuation on that date.

Clause 34, states as follows :-

"(1) Employees who have retired from the service of the Bank between the 1st day of January, 1986 and the 31st day of October,1993 shall be eligible for pension with effect from the 1st day of November,1993."

Clause 35, states as follows :-

Amount of pension :-

"(2) In the case of an employee retiring in accordance with the provisions of the Service Regulations or Settlement after completing a qualifying service of not less than thirty three years the amount of basic pension shall be calculated at fifty per cent, of the average emoluments. "

10. The Indian Overseas Bank Officers' Service Regulations 1979 of 19(1) is as follows :-

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"(1) The age of retirement of an officer employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time.

Provided that the Bank may, at its discretion, on review by the Special Committee / Special Committees as provided hereinafter in sub-regulation (2) retire, if it is considered necessary to do so in the public interest, an officer employee or on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an officer employee or otherwise which ever is earlier;"

The scheme for appointment of dependants of the deceased employees on compassionate grounds was recommended to be modified by the Ministry of Finance Department of Economic (Banking Division) by its communication, dated 25th May 1982, which is as follows :-

" In exceptional cases where the Board of Directors of the banks is satisfied that the condition of the family is indigent and in great distress, the benefit of compassionate appointment may be extended to the wife, son, or daughter of a bank employee retired on medical grounds subject to the following conditions :

(i) all such cases of appointment on compassionate grounds should be put up for the approval of the Board of Directors of the Bank. Before giving its approval, the Board should satisfy itself about the genuineness of the case.

(ii) The benefit would not be extended to a case where the bank employee has retired on or after attaining the age of 55 years.

(iii) The benefit would normally be restricted to the wife, son or daughter of the employee retired on medical grounds. The benefit may, however, be extended to a near relative other than the wife, son or daughter of the employee only in very expectional circumstances where it is established that such a near relative is going to be the bread-winner of the family.

(iv) The application for appointment on compassionate grounds should ordinarily be received immediately on the retirement of the bank employee and should in no case be entertained after sixty days of the date of retirement of

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the employee."

11. The learned counsel for the respondent contends that it is not premature retirement under Regulation 19(1) , 2nd proviso – As early as on 20.09.1988, the Bank did not accept it with any condition attached to it. It is also not a case of premature retirement in public interest as contemplated under 1st proviso to Regulation 19(1). Therefore, Regulation 32 is not attracted. The petitioner had secured appointment to his son under the compassionate appointment scheme and retired under that scheme on health grounds. He having retired prematurely under compassionate appointment scheme on medical grounds, he is not a "retiree" covered by the Pension Scheme. The petitioner has not retired as per the definition of the term "Retirement" under Regulation 2(y) as he has not retired on account of his reaching the age of superannuation. Regulation 29 does not apply to the petitioner as he retired on 09.05.1989. The petitioner's retirement does not fall under Regulation 2(y) (c;) because he did not retire either under the 1st proviso of Regulation 19(1) nor under the 3rd proviso to Regulation 19(1). Therefore, Regulation 32 is not attracted. Further, Regulation 34 is not attracted as the petitioner does not fall under any of the clauses of retirement under Section 2(y). Regulation 30 also does not apply as it is only from 01.11.1993."

12. The Learned counsel for the petitioner also states that since the matter pertains to recovery of pension from the respondent, in accordance with the established pension regulations, the question of latches cannot be raised by the respondent. Further, the petitioner employee should be given the benefit of interpretation both on law and on fact, if there are two ways of interpreting a given situation. The source of retirement of the petitioner should be founded only within the service regulations and cannot be from outside. Therefore, the petitioner's retirement from service can be traced to Regulation 19(1) of Indian Overseas Bank (Officers') Service Regulations, 1979, read with the proviso therein and thereby coming under Regulation 32 of the Indian Overseas Bank (Employees') Pension Regulations, 1995. The definition of retirement cannot also be beyond what is formed under regulation 2 (y) of the Indian Overseas (Employees) Pension Regulations, 1995, since under regulation 3(1)(a) it is clearly stated that the said regulations shall apply to employees who were in the service of the bank on or after the first day of January, 1986, but had retired before the first day of, November 1993, read along with regulation 14 which specified the qualifying service. Further, Section 34 is to be construed independent of Regulation 32. Reading Regulation 32 (b), it is seen that Premature Retirement Pension may be granted to an employee who retires from service on account of orders of the bank who retire prematurely in public interest or for any other reasons specified in service regulations or settlement.

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13. On a perusal of the affidavit filed in support of the writ petition and the counter affidavit filed on behalf of the respondent bank and the documents filed before this court and on hearing the arguments adduced on behalf of the parties, this Court is of the view that the grant of voluntary retirement to the petitioner by the respondent bank cannot be outside the service regulations applicable to the employee. The definition of 'retirement' provided under Regulation 2(y) which covers all the retirements and also the voluntary premature retirement by the bank before superannuation. Especially, in view of the fact that the Indian Overseas Bank (Employees') Pension Regulations, 1995, is said to apply to all the employees who were in the service of the bank on or after first January, 1986, but had retired before the first day of November, 1993. Reading Regulation 32, the case of the petitioner is further strengthened, since Regulation 32 states that premature retirement pension may be granted to an employee who has rendered minimum 10 years of service, retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reasons specified in the service regulations or settlement, if otherwise, he was entitled to such pension or superannuation on that date. Since Regulation 2(y) (a) applies to employees who retire on attaining the age of superannuation, b) applies to voluntary retirement in accordance with provisions contained in Regulation 29, both those provisions will not apply to the petitioner herein. Regulation 29 applies to an employee who seeks voluntary retirement on or before the first day of November 1993. Therefore, reading clause (c) of Regulation 2(y) with Regulation 32 and Regulation 34, which applies to payment of pension in respect of employees who retired or died between 01.01.1986 to 31.10.1993, it is clear that the retirement of the petitioner, even if it is on compassionate grounds or from medical reasons, will have to be only within the scope of the above said regulations. The appointment of the son of the petitioner in the respondent bank cannot prevent the petitioner from making a valid claim with regard to his pension.

In this view of the matter, the claim of the petitioner for pension is to be allowed, subject to his fulfilling the other conditions necessary to make him eligible for such pension. Therefore, the respondent is directed to consider the claim of the petitioner for payment of pension in accordance with the pension scheme of 1995, along with simple interest at 6% per annum, covering the period for which he is eligible for such pension.

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With the above observations, the writ petition is allowed. Consequently, the connected WPMP is closed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

ssm

To

The Chairman & Managing Director,
The Management of Indian Overseas Bank,
763, Anna Salai,
Chennai - 600 002.

+1cc to Mr.P.Chandrasekaran, Advocate Sr 24788

+1cc to M/s. Aiyar & Dolia Advocate Sr 24400

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km/17.6.

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